

1 of state government including prison administration. The variety of prison
2 activities, including bathing, restroom, canteen purchases, transportation
3 and medical care and the variety of other prison activities and programs.

4 151. The defendants failing to provide equal access to pre and post
5 treatment custodial care housing cooling for it's large volume of HRM
6 patients; the failure to provide uncontaminated drinking water to 60, 70,
7 and 80 year-old HRM patients who are intentionally subjected to deadly
8 excessive heat and lack of any ambient air cooling. This has resulted in
9 improper exclusion from participation in, and denial to Plaintiff of the
10 benefits of a prison service on the basis of his physical handicap.

11 152. The Federal Damages Class Representatives and Class are currently
12 subject to, and will continue to be subject to the unlawful treatment
13 and are entitled to damages pursuant to 42 U.S.C. § 12101 et seq.

14 153. Plaintiffs re-allege all the preceding and following paragraphs of
15 and allegations in, this Complaint.

16 XI. COUNT FOUR - VIOLATION OF THE REHABILITATION ACT OF 1973,
17 29 U.S.C. § 793 et seq.,. (Against individual Defendants)

18 154. Plaintiffs re-allege all the preceding and following paragraphs of
19 and allegations in, this Complaint.

20 155. The Rehabilitation Act provides, in pertinent part, that "[n]o
21 otherwise qualified individual with a disability ... shall, solely by
22 reason of her or his disability, be excluded from participation in, be
23 denied the benefits of, or be subjected to discrimination under any
24 program or activity receiving Federal financial assistance" 29 U.S.C. §
25 794(a). The statute further defines "[P]rogram or activity" to include
26 "all the operations of . . . a department, agency special purpose district
27 or other instrumentalilty of a State or of a local government." 29 U.S.C.
28 § 794(b). This language suggests that the act applies broadly to all

1 aspects of state and local governance. Moreover, we have interpreted this
2 precise language as evincing Congress' intent to apply the RA to "any
3 program or activity receiving Federal financial assistance, "including
4 state prisons." See Bonner, 857 F.2d at 562 (internal quotations omitted).
5 We also held in Bonner that prison disciplinary hearings are "programs"
6 within the meaning of the RA.

7 156. Defendants' acts and omissions that result in unequal access to the
8 programs, services, and activities provided by Defendants as alleged herein
9 are in violation of 29 U.S.C. § 794 et seq. Defendants are the direct
10 recipients of federal funds sufficient to invoke the coverage of Section
11 504, and are unlawfully discriminating against Class Representatives and
12 the Class on the sole basis of Plaintiff's disabilities.

13 157. The Federal Damages Class Representatives and Class are currently
14 subject to, and will continue to be subject to the unlawful discriminatory
15 treatment and are entitled to damages pursuant to 29 U.S.C. § 794 et seq.

16 XII. COUNT FIVE - VIOLATION OF THE CALIFORNIA DISABLED PERSONS ACT
17 (Cal.Civ.Code § 54 et seq., Against All Individual Defendants)

18 158. Plaintiffs re-allege all the preceding and following paragraphs of
19 and allegations in the Complaint.

20 159. The California Disabled Persons Act incorporates the entirety of
21 the ADA. Cal.Civ.Code § 54.1(d). Any violation of the ADA is a per se'
22 violation of the California Disabled Persons Act. As stated above, the
23 Defendants have failed to comply with the ADA and, therefore, have failed
24 to comply with the California Disabled Persons Act's prohibitions against
25 disability discrimination.

26 160. The California Damages Class Representatives and Class are
27 currently subject to, and will continue to be subject to the unlawful
28 discriminatory treatment and are entitled to damages pursuant to Cal.Civ.

1 Code § 54 et seq.

2 XIII. COUNT SIX - VIOLATION OF THE CALIFORNIA ELDER ABUSE ACT
3 (California Welfare and Institution Code § 15600 et seq.)
4 [Against All Individual Defendants]

5 161. Plaintiffs re-allege all the preceding and following paragraphs of,
6 and allegations in, this Complaint.

7 162. The Defendants interfered with the California Damages Class
8 Representatives and Class', rights to be free from neglect and physical
9 abuse under California's Elder Abuse Act.

10 163. The aforementioned acts of Defendants proximately caused Plaintiffs
11 to suffer from Defendants negligent failure to provide safe dependent care
12 to HRM patients who are housed in Defendants pre and post treatment
13 custodial care housing units in violation of Cal.Welf.Inst. Code §
14 15610.57. Additionally, Defendants acts to intentionally harm Plaintiffs
15 by providing contaminated drinking water, during many high heat episodes,
16 to Elder or Dependent care HRM patients, constitutes "physical abuse"
17 because the intentional acts of abuse were committed with recklessness,
18 oppression, fraud and malice in violation of Cal.Welf.Inst. Code
19 § 15610.63.

20 164. The California Damages Class Representatives and Class are
21 currently subject to, and will continue to be subject to Defendants
22 deadly, substandard and unlawful care and custody treatment alleged herein
23 and seek statutory damages in an amount to be proven at trial, and to
24 Punitive damages.

25 XIV. COUNT SEVEN - INJUNCTIVE RELIEF PURSUANT TO ARTICLE 1 § 7 OF
26 THE CALIFORNIA CONSTITUTION [EQUAL PROTECTION] AND
27 CAL.GOV.CODE § 11135(A) (AGAINST CDCR, CIM & WARDEN BORDERS)

28 165. Plaintiffs re-allege all the preceding and following paragraphs of,
and allegations in, this Complaint.

//

1 166. The Defendants interfered with the California Injunctive Relief
2 Class Representatives' and Class' rights to equal protection of the law
3 under Article 1 § 7 of the California Constitution, as previously alleged.

4 167. California Government Code Section 11135(a) provides that no person,
5 on the basis of sexual orientation, gender identity or gender, shall be
6 unlawfully denied full and equal access to the benefits of, or be
7 unlawfully subjected to discrimination under any program or activity
8 operated or funded directly by the State.

9 168. Plaintiffs are informed and believe that the CDCR and CIM receive
10 financial assistance from the state.

11 169. The aforementioned acts of Defendants proximately caused the
12 California Injunctive Relief Class Representatives and Class to be denied
13 full and equal access to the benefits of, or be unlawfully subjected to
14 discrimination under, programs or activities receiving financial
15 assistance from the State of California.

16 170. The California Injunctive Relief Class Representatives and Class
17 are currently subject to, and will continue to be subject to, absent the
18 intervention of this court, the unlawful treatment alleged herein, and
19 therefore, seek injunctive relief under the foregoing Constitutional
20 provisions and statutes on behalf of themselves and the foregoing
21 Constitutional provisions and statutes on behalf of themselves and the
22 class of similarly situated individuals.

23 XV. APPROPRIATENESS OF EQUITABLE RELIEF

24 171. The Federal and California Injunctive Relief Class Representatives
25 and Classes are currently (or will in the future be) incarcerated at the
26 CIM and will continue to be discriminated against into the future, absent
27 intervention of this Court. Further, CIM has informed Plaintiffs in
28 response to complaints and written grievances about the on-going

1 discriminatory and dangerous (sometimes deadly) treatment that Defendants
2 inflect upon the HRM Custodial care patients according to policy and deny
3 any discriminatory treatment, thus they will not change how they
4 discriminate against HRM patients.

5 172. CIM's continuing discrimination and unequal treatment of HRM
6 custodial care patients violates the Federal and California Injunctive
7 Relief Class Representatives' and Classes' constitutional rights, and
8 causes them continuing, sweeping, dangerous and irreparable harm, in many
9 cases premature death.

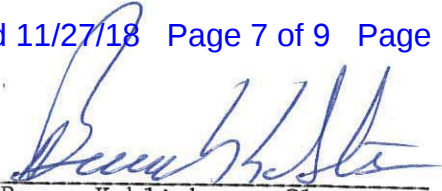
10 173. Because no adequate remedy at law exists for the injuries alleged
11 herein, Plaintiffs seek injunctive releif under both federal and state
12 law.

13 XVI. PRAYER


14 WHEREFORE, Plaintiff's on behalf of themselves and the class
15 members they represent, request damages against each Defendant as follows:

- 16 1. General and Special damages according to proof; and,
- 17 2. Temporary, preliminary and permanent injunctive relief
18 prohibiting Defendants from continuing to engage in the unlawful practices
19 complained of herein; and,
- 20 3. As against the individual Defendants only, Punitive damages
21 according to proof; and,
- 22 4. In addition to actual damages, statutory damages as allowed by
23 law, including statutory and treble damages under California Civil Code
24 §§52 and 52.1, and 54 et seq., and California Welfare and Institutions
25 Code § 15600 et seq.; and,
- 26 5. Attorneys' fees and costs under 42 U.S.C. § 1988; California
27 Civil Code §§ 52(b)(3), 52.1(h); California Code of Civil Procedure
28 § 1021.5, and whatever other statute or law may be applicable; and,

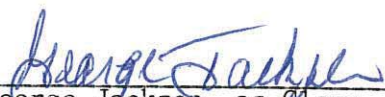
1 Dated: November 24, 2018


Bruce Koklich, as Class
Representative Plaintiff

2
3
4 Dated: 11/24/2018


Christopher Camp, as Class
Representative Plaintiff


5
6
7 Dated: 11/24/2018


George Jackson, as Class
Representative Plaintiff

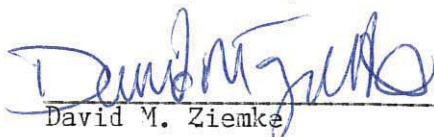
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9
10 DEMAND FOR JURY TRIAL

11 Plaintiff's on behalf of themselves individually and on behalf of
12 the Class, demand a Jury Trial.

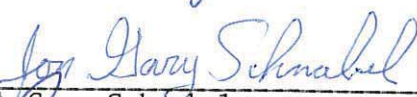
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14 Dated: 11/23/2018


Harold Taylor

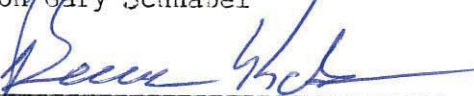
15
16 Dated: 11-25-18


David M. Ziemke

17
18 Dated: NOV. 25, 2018


John Gary Schnabel

19
20 Dated: November 24, 2018


Bruce Koklich as Attorney in Fact
for the Estate of Bruce Brooks


21
22 Dated: 11/25/18


Ronald E. Austin

23
24 Dated: November 24, 2018


Bruce Koklich

25
26 Dated: 11/24/2018


Christopher Camp

27
28 Dated: 11/24/2018


George Jackson

EXHIBIT LIST SUMMARY TO SUPPORT UNEQUAL AND CONTAMINATED CIM DRINKING WATER
AND SUBSTANDARD AND DEADLY UNCOOLED HIGH RISK MEDICAL ("HRM")
PRE AND POST TREATMENT CUSTODIAL CARE HOUSING FOR DISABLED PATIENTS

EXHIBIT #

1. See August 15, Third Level Decision, which included Five Consumer Confidence Reports ("CCR") showing multiple contaminates exceeding Public Health Goals. Note the May 14, 2018 First Level Appeal Response wherein Defendant I. Morales admits that "of the Six contaminates listed by you, only one exceeded the other facilities" (see Pg.2 ¶2). Defendant Morales did a comparison of CIM's water quality to other facilities (a required Equal Protection element) and found CIM's drinking water to be inferior.
2. See May 30, 2018, Tier one Nitrate contamination notice (improperly not noticed as a Tier One violation) wherein CIM failed to timely and properly notice the inmate consumers that they should not consume the drinking water nor bath in it until further notice. Notice was not posted until June 5, 2018 and was inadequate based on the excessive level of contamination requiring 24 hour notice to not drink or boil the drinking water.
3. See September 2018 CIM Canteen order form wherein bottled water is .80¢ per 20 oz. bottle (a 500% mark-up) and is limited to 48 bottles of 20 oz. water (2 cases of soda).
4. See Daily Temperature logs from AccuWeather.com for the months of May through October. For the years of 2017 and 2018.
5. See May 4, 2018 CDCR 22 form response from Defendant I. Morales wherein Morales admits that "Good Catch. The [correct numerical] values passed [missed] our review and the professional Engineer Review." showing a statutory violation of Title 22 § 64481.
6. See 2001 Prison Drinking water story wherein California Institution for Women ("CIW") has purchased bottled water for the women inmates at a cost of \$480,000.00 per year for five years, but not the men. No prison filtration system has been built for either the men's or Women's prison, exactly as Mayor Dennis Yates has predicted "Even if you give them money, they [CIM] don't do anything".
7. See June 12, 2018 Estate of Bruce Brooks Forensic Toxicology Report; December 8, 2017 Forensic Pathologist Report and December 13, 2017 Certificate of Death of Bruce Brooks.
8. Class Representative Declarations supporting the Coercive Choice COA's and on-going harm to the disabled HRM patient class. Including Declarations from: Harold Taylor; David M. Ziemke; Jon Schnabel; Bruce Koklich; Ronald Austin and Jeff Sabino.

- 1 9. See May 29, 2018 §910 Government Claim form exhaustion letter on
2 Bruce Brooks Wrongful Death and Elder Abuse COA's, Claim # 18004539;
3 and July 5, 2018 §910 Government Claim form and exhaustion letter
4 on Class Representative Harold Taylor's multiple COA's, Claim #
5 18005787.
- 6 10. See 2014 Heat Plan and updates. The Heat Plan at Pg.3 ¶5 assumes
7 that some housing units have air conditioning and others do not.
8 It is illegal discrimination to intentionally transfer/aggregate
9 60, 70 and 80+ year-old HRM patients to unair-conditioned, old,
10 dilapidated and overcrowded pre and post treatment custodial care
11 housing units. Nowhere in the Heat Plan does it authorize non-cooled
12 housing for HRM patients. The Heat Plan at Pg.2 ¶3 documents the
13 hydration requirement (using CIM's contaminated drinking water) as
14 a remedy for excessive heat events.
- 15 11. See October 12, 2018 (anticipated date) Third Level Appeal decision
16 which confirms that MCSP and RJD both have air conditioning for
17 their HRM pre and post treatment custodial care housing, but CIM has
18 none because of "the significant cost associate[d] with installation
19 of air conditioning units" (see July 6, Second Level Response at
20 Pg.1 ¶5). The Third/Second Level grievance response confirms that
21 State funding for other maintenance items is more important than
22 CIM inmate deaths.
- 23 12. See July 2018 Front Page story in the Prison Legal News documenting
24 the success and the volume of correctional excessive temperature
25 litigation in other states. Plaintiff's counsel in the Wallace Pack
26 Unit case (like here at CIM) also had to remedy the prison's deadly
27 policy of providing contaminated drinking water as part of the
28 institutions Heat Plan calling for hydration during excessive heat
episodes (see Pg.3 ¶13).
13. July 22, 2016 Letter to J.Lewis, Deputy Director of Policy and
Risk Management Services for California Correctional Health
Care Services. This letter documents the pre-litigation
efforts to remediate the claims - No Respose.
14. Chino Basin Aquifer Ground Water Assessment review of California
Institution for Men Water Treatment Plant and CCR's for the years
2012, 2013, 2014, 2015, 2016 and 2017. Showing multiple
contaminates supporting an unequal and substandard water quality
finding. Also attached is a November 26, 2018 request letter
to Water Resources Control Board analyst Eric Zuniga with copy
to Southern California Water Board Field Office Bureau section
Chief Sean McCarthy documenting the inadequate and inaccurate
Lead testing and requesting remedial action.